

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 16, 2010

IN RE: Gabriel S.

**Appeal from the Chancery Court for Anderson County
No. 09CH0234 William E. Lantrip, Chancellor**

No. E2009-02297-COA-R3-PT - FILED MARCH 31, 2010

Stacy S. (“Mother”) is the biological mother of Gabriel S. (the “Child”). Following a trial, the Trial Court terminated Mother’s parental rights to the Child on three separate grounds and after finding that terminating Mother’s parental rights was in the Child’s best interest. Mother appeals. Mother maintains that the Trial Court erred when it found that the Department of Children’s Services (“DCS”) had proven by clear and convincing evidence that grounds to terminate her parental rights existed. We affirm the Trial Court’s finding that three grounds to terminate Mother’s parental rights had been proven by clear and convincing evidence. Although not expressly raised as a separate issue by Mother, we also affirm the Trial Court’s finding that it had been proven by clear and convincing evidence that terminating Mother’s parental rights was in the Child’s best interest.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Chancery Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Brian J. Hunt, Clinton, Tennessee, for the Appellant, Stacy S.

Robert E. Cooper, Jr., Attorney General and Reporter, and Douglas Earl Dimond, Senior Counsel, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children’s Services.

OPINION

Background

In February of 2009, DCS filed a petition to terminate Mother's parental rights to the Child, who currently is four years old.¹ In the petition, DCS alleged that the Child had been adjudged dependent and neglected on March 13, 2008, and had been in DCS custody since that time. As grounds for terminating Mother's parental rights, DCS alleged that: (1) pursuant to Tenn. Code Ann. § 36-1-113(g)(1), Mother had abandoned the Child by willfully failing to visit the Child or engaging in only token visitation with him during the four month period immediately preceding the filing of the petition; (2) pursuant to Tenn. Code Ann. § 36-1-113(g)(1), Mother had abandoned the Child by willfully failing to support the child or making only token support payments toward the Child's support during the four month period immediately preceding the filing of the petition; (3) pursuant to Tenn. Code Ann. § 36-1-113(g)(2), Mother had failed to substantially comply with the statement of responsibilities in her various permanency plans; and (4) pursuant to Tenn. Code Ann. § 36-1-113(g)(3), the conditions which led to the Child's removal or other conditions which made the Child's return to Mother's care unsafe continued to persist. Finally, DCS alleged that it was in the Child's best interest for Mother's parental rights to be terminated.

An attorney was appointed to represent Mother and a Guardian ad Litem was appointed to protect the Child's interests. Thereafter, Mother answered the petition and denied that grounds existed to terminate her parental rights or that termination of her parental rights was in the Child's best interest.

The trial took place on September 8, 2009, with the first witness being Marcy Dunaway ("Dunaway"), a licensed psychologist who had been treating the Child for over four months. Dunaway testified that the Child has trouble with nightmares and has had difficulty adjusting to the various changes in his life. According to Dunaway, the foster parents reported to her that after the Child visits with Mother, his "behavior tends to be worse in terms of acting out, complains of being scared, has nightmares, those sorts of behaviors." Dunaway related these behaviors to prior trauma that happened when the Child witnessed Mother stab the Child's stepfather in the chest. Dunaway also testified that the Child essentially had to fend for himself before being placed in DCS's custody. Dunaway testified that based on what the foster parents told her:

¹ DCS also sought to terminate the parental rights of the person whom DCS thought was the biological father of the Child. After a DNA test established a 0% probability that this person was the biological father of the Child, that portion of the petition was dismissed.

[H]e would put himself to bed at night and find his own food, that he would eat out of the trash can and that when [he] first came to live with [the] foster parents, they had to address a lot of those behaviors in order to stop him from the eating out of the trash can and hoarding food.

On one occasion, the Child told Dunaway that he did not want to visit with Mother anymore and then started throwing toys around the office.

The next witness was Robin Hall Will (“Will”), who testified that she cared for both of Mother’s children when they initially came into DCS custody.² Will cared for the Child from March to September of 2008. Will stated that she currently had “full custody” of Mother’s daughter. According to Will:

When I first got [the Child] and his sister both I took them to the doctor and they were [in the] 90 percent category of being [malnourished] and underweight for their age, they were both eating out of the trash, eating cat food and drinking out of the toilet. Loud noises would terrify both of them. . . . We worked on behavior skills, I had several people come into the home and work on behavior skills because [the Child] was aggressive towards his sister, choking her, hitting her, and had problems eating. He would eat so fast he would throw up.

Both children initially came into DCS custody after Will called the police and asked them to check on the status of the children. At that particular point in time, Will was at the hospital with her son, Jarred Hall, whom Mother had just stabbed.³ When the police arrived at Mother’s residence to check on the children, the children were unattended and shut in a dark room. Mother returned home after about 20 more minutes and explained that she had gone to get cigarettes.

² Mother also has a daughter who came into DCS custody at the same time as the Child. Mother’s parental rights to her daughter are not at issue in this case. Will is the biological grandmother of Mother’s daughter. Will’s son is Jarred Hall, the person whom Mother is accused of stabbing.

³ Mother maintained throughout the trial that she was a victim of continuous domestic abuse and that she stabbed Mr. Hall in self-defense.

Mother was the next witness. Mother testified that both of her children were removed from her care in March 2008.⁴ Mother stated that she began parenting classes and drug and alcohol testing soon thereafter. Mother testified that she had no memory of admitting at a previous hearing that the Child was dependent and neglected. When asked about a court order entered in March 2008 which contained her stipulation that the Child was dependent and neglected, Mother stated that “she may have been misunderstood” previously.

Mother completed a drug and alcohol program in the summer of 2008 and was allowed visitation after that. When asked why she consistently was late for visitations, Mother explained that she had a lot of transportation issues. Mother stated that at times she was homeless and would have to rely on friends and relatives to get her to visitation. Mother stated that “[s]ometimes I would sleep in Knoxville, sometimes I would be sleeping in Kingston, [and] sometimes I would be sleeping in Coalfield.” Mother acknowledged often being late for scheduled visitations with the Child. Mother admitted that a visitation scheduled for October 15, 2008, was cancelled because she was incarcerated. Mother was incarcerated after being charged with aggravated assault and disorderly conduct. The aggravated assault charge arose from a situation where Mother allegedly drove her car into a parked car while attempting to run over Mr. Hall.

Mother testified that her only current income comes from babysitting. According to Mother, she gets paid by the State to babysit for children whose parents cannot find daycare and need to work. Mother stated this babysitting job is new and she has yet to receive a paycheck. Prior to that, Mother had worked at a Rocky Top Market for six months, but she was fired because of a customer complaint. Before that, Mother worked for a month at a restaurant in Oak Ridge. Before that, Mother worked at a different Rocky Top Market for five months, but that job ended when she voluntarily quit because she was about to be incarcerated.

Mother acknowledged that she knew she had been ordered to pay child support of “maybe \$160, \$180 per month.” Mother admitted paying only a total of \$50 in child support during the four month period immediately preceding the filing of the petition to terminate her parental rights.⁵ Mother claimed she paid as much as she could afford. Mother

⁴ The Child actually was removed from Mother’s custody in January 2008. He was adjudged dependent and neglected in March 2008.

⁵ While admitting that she paid only \$50 in child support during the four month period immediately preceding the filing of the petition, Mother testified that she paid approximately \$1,000 after the petition was filed. Proof was introduced at trial supporting this assertion.

further admitted that she was employed during at least two of the four months immediately preceding the filing of the petition.

Mother became homeless shortly after the Child was taken into DCS custody. Mother stated she currently has stable housing and signed a lease “about a month ago.” This lease is for a rental house located in Oak Ridge. Before that, Mother lived in Kingston with her fiancée, Thomas Organic, and Mr. Organic’s mother. Mother and Mr. Organic both signed the lease for the rental in Oak Ridge.

Mother testified that she completed an A&D assessment, and it was her understanding that she also had completed a mental health assessment. Mother denied being told by her caseworker that she had not satisfied the requirement that she undergo a mental health assessment. Mother claims that she was told she had to undergo domestic abuse counseling only if she stayed in a relationship with Mr. Hall. It was Mother’s understanding that she no longer was required to have domestic abuse counseling because she and Mr. Hall broke up.

According to Mother, in addition to the assault charge resulting from when she tried to run over Mr. Hall and hit someone else’s car, there is a second assault charge stemming from when she stabbed Mr. Hall. Mother further admitted that she was arrested for and charged with shoplifting about a month and a half before trial. Mother pled guilty to that charge. Mother also was charged with shoplifting in August 2008. When asked why she was committing various criminal acts while in the process of attempting to regain custody, Mother essentially stated that it was because she was hanging around the wrong group of people at that time.

Mother stated that she quit drinking “last month” because it was starting to become “a problem.” Mother’s most recent positive drug screen was “three or four months” before trial. She tested positive for a prescription drug for which she did not have a prescription.⁶

Mother acknowledged that it probably would not be best for the Child to be returned to her care immediately. Mother thought the Child likely would need some counseling before a reunification could take place as she was concerned about his emotional health.

⁶ Later in her testimony, Mother acknowledged that she had also tested positive for marijuana on one of her drug tests, but she claimed this was a false positive test result.

Mother, at the time of the trial, was spending her weekends in jail. She had been sentenced to ten days in jail, to be served on weekends, for a probation violation.

The next witness was Katy Butler (“Butler”), the Child’s DCS case worker since June 2008. Butler testified that a permanency plan was developed when the Child initially was placed in DCS custody. A new permanency plan later was developed in September of 2008. When asked what the permanency plans required, Butler stated that Mother was required to stay sober and drug-free. Mother was required to have an A&D assessment and follow all recommendations. Butler stated that while Mother did have the A&D assessment, she nevertheless failed two drug screens.

Butler further stated that Mother also was required to obtain and maintain stable employment and secure a safe and stable home for the Child. Mother had trouble maintaining stable employment. Prior to living in the house where Mother had just signed a lease, she lived in a trailer with her fiancée and that trailer needed a lot of work.⁷ Butler did not believe this trailer was a safe environment for the Child. In addition, because Mother was not on the lease on the trailer, Butler was concerned about where Mother would live if her relationship with her fiancée ended.

Butler noted that Mother did not pay child support as ordered by the Court, paying only \$50 in the four months immediately preceding the filing of the petition to terminate her parental rights. Butler added that Mother continues to associate with people who violate the law. For example, in May or June of 2009, Jarred Hall brought Mother to one of her visitations. This was right before Mr. Hall went back to jail.

As to the stable housing issue, Mother presented no documentation of stable housing until just one month before trial. Mother met the requirement that she take parenting classes. However, Mother also was required to undergo a mental health assessment and follow all recommendations.⁸ According to Butler, Mother did not undergo this assessment. Mother claimed she underwent a mental health assessment and that she would get Butler the necessary documentation showing that she did, but that never happened. Butler also stated:

Part of our goal of reunification is engaging the parents.
That’s why we have what’s called a child and family team

⁷ Mother testified that this trailer was not safe because the floors were rotting out.

⁸ For some unknown reason, the requirement that Mother undergo a mental health assessment, while a requirement of her first permanency plan which never was completed, mistakenly was not carried over as a requirement in the second permanency plan.

meeting to outline the strengths and needs of the family and the child. When [the prior case manager] had the case she provided [Mother] with resources to meet these needs then as I received the case I met with her on different occasions and had phone calls with her giving her different resources and also the child had been placed in a Holston Homes resource home. And what that means is the child has yet another case manager on top of me to help with visitations and also reviewing the perm plan and any needs that the mother needs or has in regards to meeting her goals.

The final witness was Lorrie G., the Child's foster mother. According to the foster mother, when the Child first began living with her:

[H]e was really nonverbal, he called all [adult] females mommy, he calls [adult] males daddy. . . . [H]e would go outside, he didn't know you have to ask before you went outside. He was unable at that time to ask. He would eat either like mashed potatoes with his fingers or try to eat with his face. He was afraid of kitchen knives, he would hide under the table. He was afraid of police sirens and ambulance sirens. . . . Anything even remotely violent on TV like if there was an advertisement for a boxing match he would get really upset. He did get into the garbage a couple of times, he tried to eat things out of the garbage [H]e would vomit as a result of trying to swallow too much food at once.

After describing what the Child was like when he first came into her care, the foster mother next described how the Child was doing at the time of trial. She stated that he was very nice and polite and could communicate much better. The Child liked going to church and was active in Bible study class. The Child's fears had improved a lot. At the beginning, if they were in a car and the Child heard a siren, he would tell the foster mother to run or the cops would get her. He no longer did that. The Child's fear of knives had improved, as had his eating habits. The foster mother stated that she and her husband want to adopt the Child. The foster mother and her husband have two biological children, a ten year old daughter and a six year old daughter.

Following the trial, the Trial Court entered a detailed memorandum opinion terminating Mother's parental rights. According to the Trial Court:

As required by Tenn. Code Ann. § 36-1-113(k), the Court makes the following findings of fact by clear and convincing evidence based on the testimony of the witnesses, the exhibits presented during the trial of this cause, as well as the entire record in this action.

The Anderson County Juvenile Court adjudicated the child dependent and neglected on March 13, 2008, after placing the child in the Department's custody on January 9, 2008. The mother . . . stipulated at the adjudicatory hearing that the child was dependent and neglected in that she was unable to care for the child.

The Department engaged the mother in the development of permanency plans designed to facilitate reunification of the mother and the child. The mother signed her agreement to the initial permanency plan on January 23, 2008, and the plan was ratified by the Anderson County Juvenile Court on February 14, 2008. A revised plan was developed with the mother on September 12, 2008, which reiterated the requirements in the initial plan.

Despite reasonable efforts by the Department to assist in completing her responsibilities under the permanency plans, including services through Catholic Charities, Hope of East Tennessee, Choices Parenting, Ridgeview Mental Health, and Holston Homes; assisting the mother in obtaining a mental health assessment and an alcohol and drug assessment; and maintaining contact with the mother and monitoring her progress; the mother is not in substantial compliance with the permanency plans.

The mother has no gainful employment although she is able-bodied and capable of working; she had never submitted to a mental health assessment; she has no proof of stable housing except for a copy of a lease she signed two (2) weeks ago, and she has been unable to provide any substantial proof regarding the person or persons she is currently residing with.

The mother has been consistently late to visits with the child, sometimes missing almost the entire time apportioned for visitation. However, being late to visits does not negate the fact that she visited.

As to the mother's failure to support the child, in November of 2008, the Anderson County Juvenile Court ordered the mother to pay one hundred eighty-five dollars (\$185.00) per month in support for the child. The mother knew of her support obligation and also knew that her parental rights could be terminated for failure to pay support. The mother has had periods of time in which she was gainfully employed. Since the support was ordered [and during the four month period immediately preceding the filing of the petition], the mother made only a single payment of support, and that in the amount of fifty dollars (\$50.00). The mother was otherwise capable and able to pay support but chose not to and this failure to pay was willful.

As stated, the child entered the Department's custody because the mother was unable to care for the child and the mother admitted to this. Testimony was presented that at the time the child was placed in the Department's custody he was severely malnourished and there were concerns about his level of development.

It is clear to the Court that the mother's inability to care for the child persists to this day, despite the reasonable efforts of the Department over the last twenty (20) months as previously detailed.

The mother is unable to attend visitation with her child on time, often being as much as fifty (50) minutes late for a one (1) hour visit; she has no stable housing; no gainful employment; has consistently chosen not to pay support for the child; she has been criminally charged on four (4) separate occasions since the child entered the Department's custody, including a charge of aggravated assault with a vehicle against the person that the mother stabbed with a knife in front of the child resulting in serious emotional impact to the child; and

finally, the mother herself testified that she did not believe it would be in the child's best interest to be returned to her custody at this time and could not provide a timeframe in which she believed it would be in the child's best interest to be returned to her custody.

The Court also notes that the mother's exposure of the child to violence in her home factors strongly in the Court's determination regarding the best interest of the child. Testimony presented by the foster parent and the child's psychologist shows that the child's presence in the home when the mother stabbed another person caused serious psychological harm to the child who experiences substantial fear and displays significant . . . behavioral issues and development issues due to his exposure to violence. . . .

Under Tenn. Code Ann. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(i), -102(1)(B), and -102(1)(D), the Court may terminate parental rights when a parent has willfully failed to support their child or paid only token support.

In this case, the Court finds that there is clear and convincing evidence that the mother . . . willfully failed to support the child. The mother was under a support order from November, 2008, to pay one hundred eight-five dollars (\$185.00) per month in support. The mother knew of her support obligation and that her parental rights could be terminated if she failed to support the child. She had periods of gainful employment and was fully capable of paying support. Despite this, the mother made only a single payment in the amount of fifty dollars (\$50.00) [during the relevant four month period]⁹

Under Tenn. Code Ann. §§ 36-1-113(g)(2) and 37-2-403(a)(2), the Court may terminate parental rights when a parent has failed to substantially comply with the permanency plan, despite reasonable efforts by the Department to assist the parent.

⁹ The Trial Court previously found that there was insufficient evidence that Mother had willfully abandoned the Child by failing to visit.

In this case, the Court finds that there is clear and convincing evidence that the Department made reasonable efforts to assist the mother as previously detailed. Despite this assistance, the mother has no gainful employment, no stable housing, has not submitted to a mental health assessment, and has failed to pay support for the child. . . .

Under Tenn. Code Ann. § 36-1-113(g)(3), the Court may terminate parental rights when the conditions that existed at the time of removal persist or other conditions exist that in all probability would lead to further neglect or abuse of the child.

In this case, the Court finds that there is clear and convincing evidence that the child was removed because the mother, by her own admission, was unable to care for the child. It is clear from the evidence presented that the mother continues to be unable to care for the child. She has no stable housing, has no gainful employment, has not submitted to a mental health assessment to address the significant domestic violence she has participated in, has been arrested four (4) times since the child entered custody including an arrest for aggravated assault with a vehicle, is unable to provide any information about the person or person(s) she is currently residing with, and has been unable to attend visitations with the child on time. Further, the mother herself testified that it would not be in the child's best interest to be returned to her custody at this time and could provide no time frame for when she believed it would be in the child's best interest to be returned to her custody. . . .

Under Tenn. Code Ann. § 36-1-113(i), the Court is required to find that termination of parental rights is in the child's best interest.

In this case, the Court finds that there is clear and convincing evidence that termination of [the mother's] parental rights is in the best interest of the child in that [the mother] has failed to pay support for the child; she has not made changes in her conduct or circumstances that would make it safe for the child to return home; despite reasonable efforts by [DCS,] she has not made changes in her lifestyle or conduct so that lasting

change does not appear possible; she has been criminally charged four (4) times since the child entered custody, including a charge of aggravated assault with a vehicle against the person she stabbed in front of the child in the home; the child has significant psychological issues resulting from witnessing the domestic violence in the home and is making progress resolving those in his foster home; when the child entered custody he was undernourished and developmentally delayed but since entering foster care these issues are abating; [the mother] is unable to attend visits with the child on time; she has failed to substantially comply with the permanency plans; and she herself admits that it would not be in the child's best interest to return to her custody at this time.

Based on the foregoing, the Trial Court entered an order terminating Mother's parental rights. Mother appeals claiming that clear and convincing evidence had not been presented to the Trial Court that grounds existed to terminate her parental rights.

Discussion

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights in *In re F.R.R., III*, 193 S.W.3d 528 (Tenn. 2006). According to the Supreme Court:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

Id. at 530.

The statutory provisions upon which the Trial Court terminated Mother's parental rights are Tenn. Code Ann. §§ 36-1-113(g)(1) - (g)(3) (Supp. 2009), which provide as follows:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home

We first address whether the Trial Court erred when it found that Mother had abandoned the Child by willfully failing to support him. The definition of "abandonment"

relied upon by the Trial Court is found at Tenn. Code Ann. §§ 36-1-102(1)(A)(i), - 102(1)(B) and -102(1)(D) (Supp. 2009), which state:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, “abandonment” means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

* * *

(B) For purposes of this subdivision (1), “token support” means that the support, under the circumstances of the individual case, is insignificant given the parent’s means;

* * *

(D) For purposes of this subdivision (1), “willfully failed to support” or “willfully failed to make reasonable payments toward such child’s support” means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child.

While Mother had trouble keeping a job because of her own improper conduct, *i.e.*, she was in jail or being fired, the proof establishes that she, nevertheless, was physically and mentally able to secure gainful employment when she wanted to do so. Mother admitted that for at least two of the four months immediately preceding the filing of the petition, she was gainfully employed. Despite being employed, she paid only \$50.00 in child support, even though she knew she had been ordered to pay \$185.00 per month. The proof established, clearly and convincingly, that: (1) Mother had or was able to secure gainful employment during the four month period immediately preceding the filing of the petition;

(2) that she knew she was subject to a court order that required her to pay child support in the amount of \$185.00 per month; and (3) that she paid only token support of \$50.00 during this relevant four month period. The judgment of the Trial Court that Mother had abandoned the Child by willfully failing to support the Child or willfully paying only token child support is affirmed.

The next issue is whether the Trial Court erred when it found that Mother had failed to substantially comply with the statement of responsibilities contained in her permanency plan. While Mother did complete some of the plan's requirements, many crucial portions of the plan went uncompleted. For example, Mother never demonstrated that she had a stable home in which to raise the Child. Bringing a lease to trial that had been signed at the last minute is insufficient. Mother failed to maintain stable employment. Mother was unable to stay drug-free. Mother was unable to stay out of jail. Mother simply never established that she had a safe home in which to raise the Child or a stable income to support the Child. In short, the proof was overwhelming that Mother failed to substantially comply with the statement of responsibilities contained in her permanency plans. The Trial Court's judgment that DCS had proven clearly and convincingly that grounds existed to terminate Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(2) is affirmed.

The next issue is whether the Trial Court correctly determined that grounds had been proven pursuant to Tenn. Code Ann. § 36-1-113(g)(3) to terminate Mother's parental rights. There is no question that the Child has been removed from Mother's home by order of the court for at least six months. The conditions which led to the removal or other conditions still exist which make the Child's return to Mother's care altogether unsafe. Mother has not shown that she can maintain stable employment and financially care for the Child. Mother has not demonstrated an ability to provide safe and stable housing. Mother cannot stay drug-free. Mother continued to commit criminal acts. Mother has not shown that these persistent conditions can or will be remedied by her in the near future. By continuing the parent/child relationship, the Child's chances of integration into a safe and stable home diminish, as evidenced by the fact that there currently are foster parents who want to adopt the Child. We affirm the Trial Court's judgment that DCS has proven, clearly and convincingly, that grounds to terminate Mother's parental rights exist pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

Finally, we address the Trial Court's determination that DCS had proven, clearly and convincingly, that termination of Mother's parental rights was in the Child's best interest. We address this issue out of an abundance of caution even though Mother did not raise it as a separate issue on appeal. The pertinent statutory provision is Tenn. Code Ann. § 36-1-113(i) (Supp. 2009) which provides:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the

parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

For the sake of brevity, we will not restate all of the pertinent facts. Suffice it to say, however, that Mother is clearly unable to take care of the Child properly. Mother has made no adjustment to her circumstances that would make it safe for the Child to be returned to her care now or at any time in the near future. The Child currently is placed in a good foster home and the foster parents are desirous of adopting him. Mother even admits that it would not be in the Child's best interest for her to be awarded custody immediately. The proof is inescapable that the best interest of the Child is served by terminating Mother's parental rights and allowing the Child to be integrated into a safe and stable home. Accordingly, we affirm the judgment of the Trial Court finding that DCS had proven by clear and convincing evidence that termination of Mother's parental rights was in the Child's best interest.

Conclusion

The judgment of the Chancery Court for Anderson County is affirmed. This cause is remanded to the Chancery Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Stacy S., and her surety, if any, for which execution may issue, if necessary.

D. MICHAEL SWINEY, JUDGE